MDR Tracking Number: M5-04-3848-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 7-8-04.

The IRO reviewed therapeutic exercises, manual traction, myofascial release, joint mobilization, office visits, muscle testing, ROM, motion analysis, massage, manual therapy technique, electrical stimulation, ultrasound, mechanical traction, and FCE from 7-30-03 through 3-3-04.

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the majority of the medical necessity issues. The IRO concluded that the office visits, joint mobilization, manual traction, therapeutic exercises, and myofascial release on 7-30-03 and 7-31-03; ROM, motion analysis, massage, manual therapy technique, therapeutic exercises, and office visits on 8-4-03, 8-5-03, 8-6-03, 8-7-03, 8-11-03, and 8-13-03; office visits on 9-3-03 and 9-18-03; ROM and motion analysis on 8-18-03, 10-10-03, and 11-17-03; office visits, therapeutic exercises, manual therapy technique, and massage on 10-7-03 through 11-14-03; muscle testing and motion analysis on 10-13-03; office visit on 11-17-03, 2-10-04, and 3-2-04; and FCE on 3-3-04 were medically necessary. The IRO agreed with the previous determination that the remaining services were not medically necessary. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor $460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this Order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division. On 8-4-04, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

Codes 97032, 97110, 97122, 97250, 97265, 99213 billed for dates of service 7-9-03, 7-10-03, 7-14-03, 7-15-03, 7-16-03, 7-17-03, and 7-18-03

The carrier denied the services/treatments on these dates of service; however, neither party submitted EOBs. Per Rule 133.307(e)(2)(B), the requestor shall include a copy of each EOB, or if no EOB was received, convincing evidence of carrier receipt of that request. Requestor submitted a signed certified mail receipt as convincing evidence of carrier receipt of request. Per

Rule 133.307(e)(3)(B), the carrier is required to provide any missing information including absent EOBs not submitted by the requestor. The carrier's initial response to the medical dispute did not include the missing EOBs for these disputed dates of service. Therefore, reimbursement recommended in accordance with the 1996 Medical Fee Guideline.

- 97032 - Per Medicine ground rule I. A. 10. a., a physical therapy session is any combination of four modalities, procedures, and/or physical medicine activities and training. The requestor billed five modalities. Therefore, this code will not be reviewed.

- 97122 – MAR is $35.00 (each 15 min.) x 7 DOS = $245.00

- 97250 – MAR is $43.00 x 7 DOS = $301.00.

- 97265 – MAR is $43.00 x 7 DOS = $301.00.

- 99213 – MAR is $48.00 x 7 DOS = $336.00

- Code 97110 - **RATIONALE:** Recent review of disputes involving CPT code 97110 by the Medical Dispute Resolution section as well as analysis from recent decisions of the State Office of Administrative Hearings indicate overall deficiencies in the adequacy of the documentation of this code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes "one-on-one". Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Medical Review Division (MRD) has reviewed the matters in light of the Commission requirements for proper documentation. The MRD declines to order payment for code 97110 because the daily notes did not clearly delineate the severity of the injury that would warrant exclusive one-to-one treatment.

Codes 95851, 97750-MT, and 99090 billed for date of service 7-21-03.

- 95851 denied as "F – 204, a separate service and other related service were billed on the same day". ROM is not global to any other service billed on the same day per the 1996 Medical Fee Guideline. Therefore, recommend reimbursement of $36.00.

- 97750-MT. EOB states payment recommended for $43.00. Requestor states they did not receive payment. Carrier provided check # 1388952 issued on 8-5-03 for $239.00, which includes this $43.00. Requestor deposited check on 8-12-03. Therefore, no dispute exists.

- 99090 denied as "G -, 719 – this services does not normally warrant a charge. Per the 1996 Medical Fee Guideline, this is an allowable charge and is not global to any other service. Therefore, recommend reimbursement of $108.00.

Code 97265 billed for date of service 7-22-03

The carrier denied this services; however, neither party submitted an EOB. Per Rule 133.307(e)(2)(B), the requestor shall include a copy of each EOB, or if no EOB was received, convincing evidence of carrier receipt of that request. Requestor submitted a signed certified mail receipt as convincing evidence of carrier receipt of request. Per Rule 133.307(e)(3)(B), the carrier is required to provide any missing information including absent EOBs not submitted by the requestor. The carrier's initial response to the medical dispute did not include the missing EOBs for these disputed dates of service. Therefore, reimbursement recommended in accordance with the 1996 Medical Fee Guideline.

- 97265 – MAR is $43.00.

Code 99080-73 billed for date of service 9-7-03 was denied as "F – 284, no allowance was recommended as this procedure indicates a status 'B'.

The TWCC-73 is a required report per Rule 129.5. A status 'B' indicates service is not paid separately. Required reports are never bundled. The Medical Review Division has jurisdiction in this matter; therefore, recommend reimbursement of $15.00.

Codes 97110, 97124, 97140, and 99213 billed for date of service 9-10-03

The carrier denied these services/treatments; however, neither party submitted EOBs. Per Rule 133.307(e)(2)(B), the requestor shall include a copy of each EOB, or if no EOB was received, convincing evidence of carrier receipt of that request. Requestor submitted a signed certified mail receipt as convincing evidence of carrier receipt of request. Per Rule 133.307(e)(3)(B), the carrier is required to provide any missing information including absent EOBs not submitted by the requestor. The carrier's initial response to the medical dispute did not include the missing EOBs for these disputed dates of service. Therefore, reimbursement recommended in accordance with Rule 134.202.

- Code 97110 - **RATIONALE:** Recent review of disputes involving CPT code 97110 by the Medical Dispute Resolution section as well as analysis from recent decisions of the State Office of Administrative Hearings indicate overall deficiencies in the adequacy of the documentation of this code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes "one-on-one". Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Medical Review Division (MRD) has reviewed the matters in light of the Commission requirements for proper documentation. The MRD declines to order payment for code 97110 because the daily notes did not clearly delineate the severity of the injury that would warrant exclusive one-to-one treatment.

- 97124 – MAR is $22.75 x 125% = $28.44

- 97140 – MAR is $27.24 x 125% = $34.05

- 99213 – MAR is $52.95 x 125% = $66.19

Code 99080-73 billed for date of service 11-7-03.

- EOB states payment recommended for $15.00. Requestor states they did not receive payment. Carrier provided check # 1446870 issued on 12-1-03 for $15.00. Requestor deposited check on 12-9-03. Therefore, no dispute exists

The above Findings and Decision is hereby issued this 16th day of November 2004.

Dee Z. Torres
Medical Dispute Resolution Officer
Medical Review Division

ORDER

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the Respondent to pay the unpaid medical fees outlined above as follows:

- In accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) for dates of service through July 31, 2003;

- In accordance with Medicare program reimbursement methodologies for dates of service on or after August 1, 2003 per Commission Rule 134.202 (c);

- In accordance with TWCC reimbursement methodologies regarding Work Status Reports for dates of service on or after August 1, 2003 per Commission Rule 134.202 (e)(8);

- plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this Order.

This Order is applicable to dates of service 7-9-03 through 3-3-04 as outlined above in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 16th day of November 2004.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

September 14, 2004

David Martinez
TWCC Medical Dispute Resolution
7551 Metro Center Suite 100
Austin, TX 78744

Patient:
TWCC #:
MDR Tracking #: M5-04-3848-01
IRO #: 5284

Specialty IRO has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to Specialty IRO for independent review in accordance with TWCC Rule 133.308, which allows for medical dispute resolution by an IRO.

Specialty IRO has performed an independent review of the care rendered to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

This case was reviewed by a licensed Chiropractor. The reviewer is on the TWCC ADL. The Specialty IRO health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to Specialty IRO for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

___ was injured on ___ while working for Walmart. She sustained injuries to the lower back while lifting approximately 60 pounds from rollers while working in the receiving department. She presented for physical therapy until changing doctors to Dr. M, D.C. on 07/07/2003. ___ also sustained a prior injury to the lower back for which she had been receiving treatment. She had an MRI of the lumbar spine previous to the occupational injury on 09/12/2002 and post injury on 07/22/2003 that were found to be identical and unchanged. There is evidence prior to injury of disc degeneration at L4-5 with lateral recess narrowing with patent foramina.

___ has also had a diagnostic facet injection with Dr. B, M.D. and lumbar facet rhizotomies. She also had a lipoma injection by Dr. E. ___ has had a combination of passive and active therapies before and during injections. She has also had multiple range of motion and muscle testing. ___ also participated in a chronic pain management program.

Records reviewed include but are not limited to MRI on 09/12/2002 and 07/22/2003. Daily notes from Dr. M dated 07/07/2003 through 03/03/2004. Also reviewed were injection note from Dr. E on 02/26/2004, injection note from Dr. B on 09/16/2003 and rhizotomy from 09/30/2003. Muscle testing on 07/08, 07/21, 08/04, 08/18, 10/13, 11/23 and 12/17/2003. ROM testing on 07/08, 07/21, 08/04, 10/10 and 11/14/2003. Also, 40 plus pages of peer reviews from Consilium MD spanning from 08/19/2003 through 04/01/2004.

DISPUTED SERVICES

The items in dispute are the retrospective medical necessity of therapeutic exercises (97110), Manual Traction (97122), myofascial release (97250), joint mobilization (97265), office visit (99213-ov), muscle testing (95833), ROM (95851), motion analysis (96004), massage (97124), manual therapy technique (97140), electrical stimulation (97032), ultrasound (97035), mechanical traction (97012), and physical performance test (97550) from 07/30/2003 through 03/3/2004 for medical necessity.

DECISION

The reviewer states that the following services on the following dates are medically reasonable and necessary: 99213, 97265, 97112, 97110, 97250 on 07/18, 07/30, and 07/31/2003, and 95851, 96004, 97124, 97140 and 99213 on 08/04/2003. Also considered medically reasonable and necessary are services 97110, 97124, 97140 and 99213 on the dates of 08/05/2003, 08/06, 08/07, 08/11, and 08/13/2003. The Office Visits only on 09/03/2003 and 09/18/2003 are approved. 95851 and 96004 on 08/18/2003 are considered medically reasonable and necessary. 97265 on 07/22/2003 is medically reasonable and necessary.

The services 99213, 97110, 97140, and 97124 on 10/07/2003, 10/08, 10/10, 10/13, 10/15, 10/17, 10/20, 10/22, 10/24, 10/27/2003, 11/03/2003, 11/05, 11/07, 11/10 and 11/14/2003 are considered medically reasonable and necessary after facet rhizotomies. 96004 and 95851 are considered appropriate on 10/10/2003 as was 95833 and 96004 on 10/13/2003 to establish post rhizotomy baseline. I also find the services 95851 and 96004 and office visit 99213 on 11/17/2003 to be medically reasonable and necessary. The reviewer recommends the office visit on 02/10/2004 and 03/02/2004. The FCE for determination on 03/03/2004 is medically reasonable and necessary.

All remaining services are denied in their entirety.

BASIS FOR THE DECISION

The reviewer notes that the patient continued to improve from 07/18/2003 until the earliest reasonable time where the doctor would have known failure of further progress dated 08/18/2004 when the patient fails to have substantial improvement. Therefore treatment until this date is indicated. This is supported by Medical Disability Advisor, Mercy Conference, and Texas Labor Code 408.021 as the treatment would be within the 8 week time frame for expected resolution.

Treatment following 08/18/2003 fails to make any positive impact on recovery or ability to return to work. The therapies performed on 09/03/2003 through 09/25/2003 are not reasonable as they are not performed in an identifiable treatment plan and would not be expected to promote recovery greater than a home exercise program.

Treatment identified as reasonable from 10/07/2003 through 11/14/2003 is as stated because it is a component of post-rhizotomy therapy in which the patient exhibited mild improvement allowed under Texas Labor Code 408.021 a). It was not substantial enough that would warrant further active therapy. Standard guidelines suggest a 25 percent improvement and lumbar extension is found to only have improved 10 percent while lumbar flexion is only 8 percent from 07/08/03 through 11/14/2003. Furthermore, by 11/26/2003 strength increase is only 2 pounds on extension and the same on flexion from 07/08/2003. This is not a substantial effect to warrant continued in office one-on-one therapy in which a home exercise program would be equally beneficial.

Treatment from 02/10/2004 through 03/03/2004 with the exceptions of approved office visits as notated in decision are not reasonable following a lipoma injection. The fact that Dr. E noted an almost complete resolution of pain following injection to the lipoma would indicate that the pain is not likely discogenic at all and in office therapy would not give the patient any improvement greater than a home exercise program.

The Functional Capacity Exam on 03/03/2004 is indicated for return to work determinations. The range of motion and muscle tests (95833 and 95851) are indicated with data analysis (96004) to monitor progress of the patient and alter treatment plans accordingly.

Specialty IRO has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Specialty IRO has made no determinations regarding benefits available under the injured employee's policy. Specialty IRO believes it has made a reasonable attempt to obtain all medical records for this review and afforded the requestor, respondent and treating doctor an opportunity to provide additional information in a convenient and timely manner.

As an officer of Specialty IRO, Inc, dba Specialty IRO, I certify that there is no known conflict between the reviewer, Specialty IRO and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

Sincerely,